

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-150186
	:	TRIAL NO. B-1404871
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
MALIK RAHAB,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant Malik Rahab was indicted for burglary, a felony of the second-degree. After rejecting an offer from the state to recommend an agreed sentence of three years' imprisonment in exchange for a guilty plea, Rahab elected to have his case tried before a jury. Rahab was found guilty as charged, and the trial court imposed a sentence of six years' imprisonment.

Rahab has appealed, arguing in his sole assignment of error that the sentence imposed was contrary to law because the trial court had punished him for exercising his constitutional right to a jury trial. A defendant should never be punished for rejecting an offered plea and exercising his or her right to a jury trial. *See State v.*

Stafford, 158 Ohio App.3d 509, 2004-Ohio-3893, 817 N.E.2d 411, ¶ 14 (1st Dist.), citing *State v. O'Dell*, 45 Ohio St.3d 140, 543 N.E.2d 1220 (1989). When the record demonstrates that “(1) the trial court engaged in plea or sentence bargaining, (2) a tentative sentence was discussed, and (3) a harsher sentence followed a breakdown in negotiations,” a presumption exists that the trial court imposed a harsher sentence because the defendant failed to plead guilty. *Id.* at ¶ 15. To overcome this presumption, the record must establish that the trial court imposed the sentence solely based on the facts of the case at hand and the defendant’s history, rather than as a punishment for exercising the right to a jury trial. *Id.*

Here, the trial court did not directly engage in plea negotiations. But after Rahab rejected the offered plea, the trial court did inform him that

The charge that you’re facing now, sir, carries a potential sentence of two to eight. There’s the presumption that you go to prison, okay? And if you didn’t take the agreed sentence and you were found guilty, it would be up to the Court to sentence you. And the Court does not look highly on cases where people don’t take responsibility and accept that they did something wrong if they’re found guilty. You understand that? Meaning it would probably be more.

After Rahab was found guilty, the trial court made the following statements: “So I don’t understand why you wouldn’t admit to that and plead to that, and you had to have a trial * * *”; “You went to trial. You gambled, you lost. You had no defense”; “He went to the trial with a prove-it defense. He had absolutely no defense. They had his fingerprints. He gambled, he lost”; and “You did this. You had no defense, and you wouldn’t take responsibility. You wanted to go to trial. All right, big winner you are. Six years Ohio Department of Corrections.”

These comments were not necessary, were inappropriate, and, absent the following circumstances, could have been deemed to have crossed the line from permissible commentary to a punishment for exercising the constitutional right to a jury trial. But the record indicates that Rahab had an extensive juvenile record, including adjudications for receiving stolen property and robbery. His juvenile record additionally contained ten adjudications for violations of court orders, demonstrating an unwillingness to comply with directives from the court. Further, while Rahab did apologize for his actions at the sentencing hearing, he additionally attempted to blame his attorney for forcing him to take his case to trial. The trial court could plausibly have found that Rahab's offered apology was disingenuous. Last, Rahab was found guilty of a felony of the second degree, which the trial court correctly noted carried a presumption of incarceration.

The record establishes that the trial court based Rahab's sentence on his personal history and the facts of the case, including the trauma suffered by the victim of Rahab's offense, rather than as a punishment for exercising his right to a jury trial.

Rahab's assignment of error is overruled, and the judgment of the trial court is affirmed.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HENDON, P.J., FISCHER and MOCK, JJ.

To the clerk:

Enter upon the journal of the court on _____
per order of the court _____.
Presiding Judge